

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)
)
Fees for Ancillary of Supplementary) **MM Docket No. 97-247**
Use of Digital Television Spectrum)
Pursuant to Section 336(e)(1) of the)
Telecommunications Act of 1996)

To: The Commission

**REPLY COMMENTS OF
CURATORS OF THE UNIVERSITY OF MISSOURI**

The Curators of the University of Missouri (the "Curators"), the licensee of Station KOMU-TV, Columbia, Missouri, by its attorneys, hereby submits its Comments concerning the Commission's Notice of Proposed Rule Making ("NPRM") in the above-captioned docket. These Comments are filed in light of comments previously submitted by the Association of America's Public Television Stations and the Public Broadcasting Service.¹ In these comments, the Curators urge the Commission to make clear that governmental licensees, in addition to noncommercial broadcasters, are exempt from paying fees for ancillary and supplementary DTV services. KOMU-TV believes that it may be the only remaining commercial television station licensed to a governmental entity; therefore, the requested exemption would have a minuscule effect upon the recoupment of fees.

¹MM Docket No. 97-247, Comments of the Association of America's Public Television Stations and the Public Broadcasting Service, filed May 4, 1998.

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I. INTRODUCTION

The Curators of the University of Missouri are state-appointed officials who govern the University of Missouri (the “University”). The University of Missouri is the oldest land grant institution west of the Mississippi River and was established by the State of Missouri to fulfill a mission of teaching, research, and service for the citizens of the state, and for the nation. Commercial VHF television station KOMU-TV is an integral part of the NBC Television Network, is licensed to The Curators of the University of Missouri.²

KOMU-TV has a strong record of community service, and is committed to serving the needs of the public.³ In addition to providing service to its community of license, Columbia, Missouri, and the surrounding area, KOMU-TV is an integral part of the University community. Specifically, KOMU-TV serves as a training ground for University students, including those enrolled in the school of Journalism, who are interested in a career in broadcasting. It provides an opportunity for many student interns (approximately 40-60 students per semester) to garner first-hand experience in various aspects of broadcasting. The station has received national recognition and media attention for the substantial role it plays in training students for careers in broadcasting. The station’s EEO reports and license renewal applications reflect the significant number of students who have worked at the station over the years. Many of the students who

²The Curators of the University of Missouri is also the licensee of several noncommercial educational FM stations.

³KOMU-TV has worked particularly hard to better the lives of children in its community. Since 1992 KOMU-TV has raised more than \$1,000,000 for nearly 120 schools through fundraisers for children’s education.

have worked at the station have gone on to be employed at other stations across the country, to top-level positions in the industry, and to the major networks.

As a commercial VHF television station that is licensed to a state educational institution, KOMU-TV is a unique broadcaster. The University of Missouri is an institution that was founded by the State of Missouri in 1839, and receives funding from the state.⁴ Accordingly, the FCC has determined that KOMU-TV qualifies as a “governmental entity,” and is exempt from paying regulatory and application fees.⁵

The Curators are concerned that the Commission in its NPRM has not addressed the unique interests of governmental licensees of commercial stations.⁶ In these comments, the Curators hereby request that the Commission extend KOMU-TV’s governmental exemption for regulatory and application fees to ancillary and supplementary DTV service fees.

⁴ Mo. Const. 1945 art. §9, §172.010, RS Mo 1994.

⁵Letter to Kathy Schmeltzer from Marily J. McDermott, Associate Managing Director for Operations, Dated April 3, 1995.

⁶Nowhere in 47 U.S.C. §336 does Congress mention governmental licensees (or non-commercial licensees). Further, while the FCC’s NPRM specifically requests comment on whether to apply the fee to noncommercial broadcasters, it does not address the unique situation of governmental licensees. Since the need to exempt noncommercial stations from ancillary and supplementary DTV service fees has been adequately addressed in other comments, the comments filed herewith are limited to the issue of an exemption for governmental entities. It is important to note, however, that not a single commenter suggested that noncommercial stations should pay DTV fees.

II. AS A STATION OWNED BY A PUBLIC GOVERNMENTAL INSTITUTION, KOMU-TV SHOULD BE EXEMPT FROM ANCILLARY AND SUPPLEMENTARY DTV SERVICE FEES

A. Exempting A Governmental Entity From DTV Ancillary and Supplementary Service Fees Is Consistent With Congressional Goals

Exempting a governmental licensee from an obligation to pay DTV fees is consistent with the terms of the Telecommunications Act. Congress has directed the Commission to structure the fee program to promote certain objectives,⁷ and these objectives would be thwarted if the Commission were to impose DTV fees on governmental licensees.

One of the stated goals of the fee is to “recover *for the public* a portion of the value of the public spectrum” made available for ancillary and supplementary use by DTV licensees.⁸ If the licensee in question is a public educational institution, however, the public benefits from that licensee’s use of the spectrum, and there is no need to “recover” that value for the public. Indeed, KOMU-TV’s revenue is earned by a public university dedicated to serving the public and the research and educational needs of its community; the station’s revenues are used to further the continuing evolution of the State University’s broadcast program, to provide high-quality excellent community-based programming, and to conduct worthy fundraising endeavors. Given the benefits of KOMU-TV’s public service, there is absolutely nothing to be gained by transferring revenues from this state public institution to federal coffers.

Another goal of the fee is to prevent broadcasters’ “unjust enrichment” through their use

⁷47 U.S.C. §366(e)(1).

⁸ 47 U.S.C. §366(e)(2)(A)(i). Emphasis added.

of the spectrum for ancillary or supplementary DTV services.⁹ Congress fears that DTV licensees could gain an unfair advantage if they pay no fee on the revenues earned from such services, given that non-broadcast licensees providing analogous services may have had to pay for their spectrum at auction. By definition, however, public institutions such as the Curators, who are mandated to use and invest their resources to serve the needs and concerns of the public, cannot be “unjustly enriched” by such revenues.

Accordingly, public policy and common sense dictate that a public governmental institution, such as the Curators should be exempt from the fees contemplated in the present NPRM.¹⁰

B. Governmental Bodies Are Routinely Exempted From Paying Fees

Exempting a governmental licensee from DTV fees is consistent with Congress’ and the Commission’s established policy to waive fees for governmental entities. Significantly, Congress exempts governmental licensees from paying annual regulatory fees,¹¹ and the Commission has found this exemption broad enough to include commercial ventures by governmental entities, including KOMU-TV.¹² In addition, Congress and the Commission

⁹47 U.S.C. §366(e)(2)(A)(ii).

¹⁰As noted earlier, KOMU-TV may be the only licensee falling within this category.

¹¹47 U.S.C. § 159(h); 47 C.F.R. §1.1162(b).

¹²Implementation of Section 9 of the Communications Act, 9 FCC Rd 5333, paras. 15-16 [year].

exempt governmental entities from paying broadcast application fees.¹³ The Commission should be consistent in its treatment of a governmental licensee such as KOMU-TV, and should also exempt it from paying fees on ancillary and supplementary DTV services.

C. The Revenue from Supplementary Services Is Needed to Help Defray the Extraordinary Costs of the Transition to DTV

The cost of the transition to digital television will be extremely high for a governmental licensee like KOMU-TV. KOMU-TV's present tower is not strong enough to accommodate a DTV antenna, and a new tower must be constructed or space leased on an existing or proposed tower. Unlike noncommercial stations, who may receive grants from various sources, such as the Corporation for Public Broadcasting Transition Fund, KOMU-TV will itself be responsible for raising such funds. Although KOMU-TV has been saving for the DTV transition, it does not have nearly sufficient funds on hand to pay for all of the costs involved. The station will thus be forced to raise money for the transition through the sale of revenue bonds or by borrowing internally from the University fund balance. Revenue from ancillary and supplementary DTV services will help KOMU-TV to repay the loans it will incur to upgrade its facilities.

¹³47 U.S.C. §158(h); 47 C.F.R. §1.113(f).

III. IN ANY EVENT THE FCC SHOULD DELAY THE ASSESSMENT OF A FEE UNTIL THE SERVICES IN QUESTION HAVE TIME TO DEVELOP

While the Curators urge the Commission to formally exempt KOMU-TV from paying ancillary and supplementary DTV services fees as soon as possible, if the Commission chooses not to do so, the Commission should at least defer any final judgment on a fee structure until the DTV industry has had a chance to develop. The concept of ancillary and supplementary DTV services is so new that broadcasters themselves are not even sure what services they will be able to provide. In the Curators' view, the establishment of a fee system based on speculative visions of what form these services might take would unnecessarily impede the growth of this new industry.

IV. CONCLUSION


The Curators of the University of Missouri (the "Curators"), the licensee of Station KOMU-TV, Columbia, Missouri, respectfully request that the Commission exempt it from any fees imposed on the provision of ancillary and supplementary DTV services. Such exemption would comport with Congress' mandate to "recover for the public" a portion of additional revenues, because KOMU-TV is licensed to a state educational institution which is a governmental entity. In addition, the Commission routinely exempts governmental entities from paying similar fees. Finally, the revenue generated by ancillary and supplementary services would assist KOMU-TV in its efforts to upgrade its facilities to digital capacity while enabling the station to be less of a drain on the University's educational resources.

While the Commission should exempt KOMU-TV from DTV fees as soon as possible, if the Commission chooses not to do so, the Commission should reevaluate its haste to impose fees on services that do not even exist yet. These proceedings would be more appropriate, and would lead to better policy, if they were conducted only after the DTV marketplace has had time to develop.

Respectfully submitted,

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Dated: August 3, 1998

CERTIFICATE OF SERVICE

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **“REPLY COMMENTS OF CURATORS OF THE UNIVERSITY OF MISSOURI”** were sent this 3rd day of August, 1998, by first class United States mail, postage pre-paid to the following:

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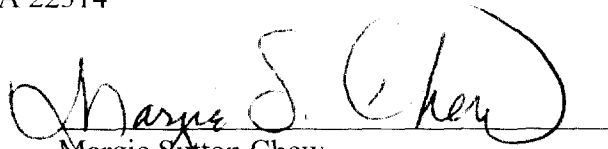
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